(3)

No. 87-1293

Supreme Court, U.S.
FILED
JUN 15 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

JEETENDRA BHANDARI,

Petitioner,

v.

FIRST NATIONAL BANK OF COMMERCE,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

MOTION TO VACATE AND REMAND

ANTONIA HERNANDEZ
E. RICHARD LARSON*
JOSE ROBERTO JUAREZ, JR.
Mexican American Legal Defense and Educational Fund
634 South Spring Street
Los Angeles, CA 90014
(213) 629-2512

MARK G. MUROV
RITA K. WARD
MUROV & WARD, P.L.C.
639 Loyola Avenue, Ste. 1250
New Orleans, LA 70113
(504) 523-6100

Counsel for Petitioner
**Counsel of Record*

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

9 pp

TABLE OF CONTENTS

	Page
Preliminary Statement.	1
Procedural Status.	2
Reasons for Vacating and Remanding in Light of Patterson v. McLean Credit Union, No. 87-107 (June 15, 1989).	3
Conclusion	6

TABLE OF AUTHORITIES

Cases:

Patterson v. McLean Credit Union, No. 87-107 (June 15, 1989) . . . passim

Runyon v. McCrary, 427 U.S. 160 (1976) . . . . . passim

Statutes:

42 U.S.C. § 1981 . . . . . passim

PRELIMINARY STATEMENT

The Fifth Circuit's decision below was premised primarily on the en banc majority's belief that Runyon v. McCrary, 427 U.S. 160 (1976), was incorrectly decided. This position was squarely rejected by this Court in Patterson v. McLean Credit Union, No. 87-107 (June 15, 1989).

For this reason, petitioner respectfully moves this Court to grant the instant petition for a writ of certiorari, and to vacate the judgment and remand this case to the United States Court of Appeals for the Fifth Circuit for further consideration in light of Patterson v. McLean Credit Union, No. 87-107 (June 15, 1989).

PROCEDURAL STATUS

The petition for a writ of certiorari in this case was filed on February 1, 1988. See 56 U.S.L.W. 3628 (U.S. Feb. 1, 1988). The question presented was as follows:

> Does 42 U.S.C. § 1981, which bars alienage discrimination and which bars discrimination in the making of private contracts, prohibit alienage discrimination in the making of private contracts?

Cert. Pet. at i; 56 U.S.L.W. 3628 (U.S. Feb. 1, 1988).

Several months after the filing of the petition in this case, this Court restored Patterson v. McLean Credit Union to the calendar for reargument, and

requested the parties to brief and argue the following question:

> Whether or not the interpretation of 42 U.S.C. § 1981 adopted by this Court in Runyon v. McCrary, 427 U.S. 160 (1976), should be reconsidered?

Patterson v. McLean Credit Union, 56 U.S.L.W. 3735 (U.S. April 25, 1988).

In view of this order in Patterson, no action has been taken by this Court on the petition in this case for nearly fourteen months.

REASONS FOR VACATING AND REMANDING IN LIGHT OF PATTERSON v. McLEAN CREDIT UNION, No. 87-107 (JUNE 15, 1989)

In Patterson v. McLean Credit Union, No. 87-107 (June 15, 1989), this Court reaffirmed it's earlier decision in Runyon v. McCrary, 427 U.S. 160 (1976),

and accordingly reaffirmed that 42 U.S.C. § 1981 bars discrimination in the making of private contracts.

In the instant case, petitioner, a lawful permanent resident, was denied the right to contract with the respondent bank to obtain a credit card. This refusal to contract occurred solely because petitioner was not a citizen. Cert. Pet. App. at 88a. Petitioner alleged that he was discriminated against on grounds of alienage in violation of 42 U.S.C. § 1981.

Rejecting petitioner's claim, the en banc Fifth Circuit held in a 7-6 decision that § 1981 does not bar alienage discrimination in the private sector. Cert. Pet. App. at 1a-25a. Both the majority and dissenting opinions expressed the view that the majority's

decision was premised on Runyon's having been wrongly decided.

Writing for the majority, Judge Gee characterized the reasoning of Runyon as "severely flawed," "faulty," and unable to "stand of its own force." Cert. Pet. App. at 13a, 14a. Based on his different view of § 1981's legislative history, Judge Gee concluded that "it is patent that these words ["make and enforce contracts"] circumscribe state action only." Cert. Pet. App. at 16a.

Judge Reavley, writing for the six dissenters, described the "root and trunk" of the majority's argument as its "conviction that the legislative history of section 1981 as outlined by the Court in Runyon is erroneous." Cert. Pet. App. at 25a. Disagreeing with the majority,

Judge Reavley added: "I take the law from the Supreme Court." Id.

This Court in Patterson has now reaffirmed Runyon and its holding that § 1981's ban applies not just to state action but to the private sector as well. The Fifth Circuit accordingly should take the law from the Supreme Court by reconsidering this case in light of Patterson.

CONCLUSION

For the foregoing reasons, petitioner respectfully urges the Court to grant the petition for a writ of certiorari, and to vacate the judgment and remand this case to the United States Court of Appeals for the Fifth Circuit for further consideration in light of

Patterson v. McLean Credit Union, No. 87-107 (June 15, 1989).

Dated: June 15, 1989.

Respectfully submitted,

Antonia Hernandez
E. Richard Larson
Jose Roberto Juarez, Jr.
Mark G. Murov
Rita K. Ward